

Title	<i>Spousal Property Petition and Spousal Property Order</i> (revise forms DE-221 and DE-226).
Summary	Forms DE-221 and DE-226 would be revised to enable a surviving registered domestic partner to use the forms to transfer or confirm property owned by the partners after the death of the other partner without administration. This revision would implement legislation to be effective January 1, 2005, that will confer the benefits and burdens of marriage on domestic partners registered with the Secretary of State on or after that date.
Source	Probate and Mental Health Advisory Committee Hon. Thomas W. Stoevers, Chair
Staff	Douglas C. Miller, Committee Counsel, 415.865.7535, douglas.miller@jud.ca.gov
Discussion	<p>The <i>Domestic Partner Rights and Responsibilities Act of 2003</i> (“Act”) became law on January 1, 2004.¹ The Act adds section 297.5 to the Family Code, effective January 1, 2005.² Section 297.5(c) provides:</p> <p style="padding-left: 40px;">(c) A surviving <i>registered domestic partner</i>, following the death of the other partner, shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower. (Italics added)</p> <p>Family Code section 299.3(a), also added by the Act but now effective, expressly identifies community property laws and laws relating to property transfer as among the rights and responsibilities that will be conferred and imposed on registered domestic partners when section 297.5 becomes effective.³</p> <p>Family Code section 297(b) provides that a domestic partnership is established in California when a Declaration of Domestic Partnership</p>

¹ Stats.2003, ch. 421 (AB 205), § 2.

² Stats.2003, ch. 421, §§ 4, 14.

³ Stats.2003, ch. 421, §§ 10, 14.

is filed with the Secretary of State by two persons who meet the requirements specified in the section.⁴ The phrase “registered domestic partner” is not defined in the Act or in the existing domestic partnership provisions, Family Code sections 297–299.6. However, the phrase as used in section 297.5 plainly refers to domestic partners who have filed a Declaration of Domestic Partnership.⁵

One of the rights and benefits available to a surviving widow or widower is the right to petition the court for a spousal property order under Probate Code section 13650 to transfer separate property of the deceased spouse or the deceased spouse’s interest in community or quasi-community property to the surviving spouse without administration, or to confirm the surviving spouse’s interest in community or quasi-community property.⁶ Form DE-221 is the petition that must be filed and form DE-226 is the order that must be signed and filed to exercise this right. These forms must be modified to enable eligible surviving registered domestic partners to use them for this purpose.

Form DE-221’s title would be changed to refer to “domestic partner” as well as “spousal” property. Throughout the remainder of the form, references to the deceased or surviving spouse would be augmented by corresponding references to the deceased or surviving registered domestic partner, the term used in Family Code section 297.5.

References in the form to community or quasi-community property or to statutes that provide for distribution of such property would not be changed. However, these references will apply to property of domestic partners registered on or after January 1, 2005.

The advisory committee also proposes other changes to form DE-221 to improve its clarity. The two footnotes now at the bottom of page 2

⁴ Inter alia, the partners must have a common residence, be over the age of eighteen, have capacity to consent to the partnership, and be of the same sex unless one or both of them is over the age of 62 and meets the eligibility criteria for certain federal old age benefits.

⁵ See, e.g., existing Family Code section 298.5(b), which requires the Secretary of State to *register* filed Declarations.

⁶ Quasi-community property is personal property and California real property acquired by the deceased spouse while domiciled outside California that would have been community property if it had been acquired while the decedent was domiciled here, or personal property and California real property acquired in exchange for property that would have been community property if it had been acquired by the deceased spouse while domiciled here. See Prob. Code, § 66.

would be reduced to one. Existing footnote 1, concerning attachment of a copy of the decedent's will, would be eliminated as unnecessary because the subject is covered in item 4c. The remaining footnote, concerning the filing of a list of known creditors of an unincorporated business operated or managed by the deceased spouse or partner required by Probate Code section 13658, would be renumbered and moved to the first page of the form just below item 7a, the item to which the footnote relates.

The instructions for item 4c, concerning attachment of a copy of the decedent's will, would be modified to conform to the instructions for attaching a copy of the decedent's will to the *Petition for Probate*, form DE-111. The revised instructions would direct the petitioner to attach a typewritten copy of a handwritten will and an English translation of a foreign-language will, in addition to the copy of the will itself.

Corresponding revisions of the *Spousal Property Order*, form DE-226, are also proposed, including changing its title to *Spousal or Domestic Partner Property Order*.

Copies of the proposed revised forms DE-221 and DE-226 are attached at pages 4–6.

Copies of existing forms DE-221 and DE-226 are attached at pages 7–9.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <div style="display: flex; justify-content: space-between;"> <div>TELEPHONE NO.:</div> <div>FAX NO. (Optional):</div> </div> <div>E-MAIL ADDRESS (Optional):</div> <div>ATTORNEY FOR (Name):</div>	FOR COURT USE ONLY <h2 style="margin: 0;">Draft 4</h2> <h2 style="margin: 0;">02/20/04</h2> <h3 style="margin: 0;">Not approved by the Judicial Council</h3>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER: HEARING DATE: DEPT.: TIME:
ESTATE OF (Name): <div style="text-align: right;">DECEDENT</div>	
<input type="checkbox"/> SPOUSAL <input type="checkbox"/> DOMESTIC PARTNER PROPERTY PETITION	

1. **Petitioner (name):** _____ **requests**
 - a. ☐ determination of property passing to the surviving spouse or surviving registered domestic partner without administration (Fam. Code, § 297.5, Prob. Code, § 13500).
 - b. ☐ confirmation of property belonging to the surviving spouse or surviving registered domestic partner (Fam. Code, § 297.5, Prob. Code, §§ 100, 101).
 - c. ☐ immediate appointment of a probate referee.
2. Petitioner is
 - a. ☐ surviving spouse of the decedent.
 - b. ☐ personal representative of (name): _____, surviving spouse.
 - c. ☐ guardian or conservator of the estate of (name): _____, surviving spouse.
 - d. ☐ surviving registered domestic partner of the decedent.
 - e. ☐ personal representative of (name): _____, surviving registered domestic partner.
 - f. ☐ conservator of the estate of (name): _____, surviving registered domestic partner.
3. Decedent died on (date): _____
4. Decedent was
 - a. ☐ a resident of the California county named above.
 - b. ☐ a nonresident of California and left an estate in the county named above.
 - c. ☐ intestate ☐ testate and a copy of the will and any codicil is affixed as Attachment 4c. (*Attach copies of will and any codicil, a typewritten copy of any handwritten document, and an English translation of any foreign-language document.*)
5. a. (Complete in all cases) The decedent is survived by
 - (1) ☐ child as follows: ☐ natural or adopted ☐ natural, adopted by a third party ☐ no child.
 - (2) ☐ issue of a predeceased child ☐ no issue of a predeceased child.
- b. Decedent ☐ is ☐ is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. (See Prob. Code, § 6454.)
6. (Complete only if no issue survived the decedent. Check **only the first box that applies.**)
 - a. ☐ The decedent is survived by a parent or parents who are listed in item 9.
 - b. ☐ The decedent is survived by a brother, sister, or issue of a deceased brother or sister, all of whom are listed in item 9.
7. Administration of all or part of the estate is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse or surviving registered domestic partner. The facts upon which petitioner bases the allegation that the property described in Attachments 7a and 7b is property that should pass or be confirmed to the surviving spouse or surviving registered domestic partner are stated in Attachment 7.
 - a. ☐ Attachment 7a¹ contains the legal description (if real property add Assessor's Parcel Number) of the deceased spouse's or registered domestic partner's property that petitioner requests to be determined as having passed to the surviving spouse or partner from the deceased spouse or partner. This includes any interest in a trade or business name of any unincorporated business or an interest in any unincorporated business that the deceased spouse or partner was operating or managing at the time of death, subject to any written agreement between the deceased spouse or partner and the surviving spouse or partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

¹ See Prob. Code, § 13658 for required filing of a list of known creditors of a business and other information in certain instances.
If required, include in Attachment 7a.

ESTATE OF (Name):	CASE NUMBER:
DECEDENT	

7. b. ☐ Attachment 7b contains the legal description (if real property add Assessor's Parcel Number) of the community or quasi-community property petitioner requests to be determined as having belonged under Probate Code sections 100 and 101 and Family Code section 297.5 to the surviving spouse or surviving registered domestic partner upon the deceased spouse's or partner's death, subject to any written agreement between the deceased spouse or partner and the surviving spouse or partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.
8. There ☐ exists ☐ does not exist a written agreement between the deceased spouse or deceased registered domestic partner and the surviving spouse or surviving registered domestic partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both. (If petitioner bases the description of the property of the deceased spouse or partner passing to the surviving spouse or partner or the property to be confirmed to the surviving spouse or partner, or both, on a written agreement, a copy of the agreement must be attached to this petition as Attachment 8.)
9. The names, relationships, ages, and residence or mailing addresses so far as known to or reasonably ascertainable by petitioner of (1) all persons named in decedent's will and codicils, whether living or deceased, and (2) all persons checked in items 5 and 6 ☐ are listed below ☐ are listed in Attachment 9.
- | <u>Name and relationship</u> | <u>Age</u> | <u>Residence or mailing address</u> |
|------------------------------|------------|-------------------------------------|
|------------------------------|------------|-------------------------------------|

10. The names and addresses of all persons named as executors in the decedent's will and any codicil or appointed as personal representatives of the decedent's estate ☐ are listed below ☐ are listed in Attachment 10 ☐ none

11. ☐ The petitioner is the trustee of a trust that is a devisee under decedent's will. The names and addresses of all persons interested in the trust who are entitled to notice under Probate Code section 13655(b)(2) are listed in Attachment 11.
12. A petition for probate or for administration of the decedent's estate
- ☐ is being filed with this petition.
 - ☐ was filed on (date):
 - ☐ has not been filed and is not being filed with this petition.

13. Number of pages attached: _____

Date:

	▶	
(TYPE OR PRINT NAME)		(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

	▶	
(TYPE OR PRINT NAME)		(SIGNATURE OF PETITIONER)